MUNICIPAL MODERNIZATION ACT FAQs

Published *City & Town* - October 6, 2016

1. What is the deadline for taxpayers to apply for personal exemptions from taxes assessed on their domiciles?

Beginning with this fiscal year, FY2017, taxpayers have until April 1 to apply to the assessors for personal exemptions whenever the actual tax bills are mailed on or before January 1. If the bills for any year are mailed after January 1, however, taxpayers will have three months from the date of mailing to apply for that year.

This deadline applies regardless of the billing system the city or town uses, i.e., semi-annual or quarterly, and applies to:

1. Personal property tax exemptions for veterans, blind persons, seniors, surviving spouses and other individuals (MGL c. 59, sec. 5, Clauses 17, 17C, 17C½, 17D, 18, 22, 22A, 22B, 22C, 22D, 22E, 22F, 37, 37A, 41, 41B, 41C, 41C½, 42, 43, 52, 53, 56 and 57);
2. Deferrals of property taxes for seniors or individuals experiencing hardships (MGL c. 59, sec. 5, Clauses 18A and 41A);
3. Residential exemptions adopted as part of annual tax classification decisions, unless the city or town has a special act setting a different deadline (MGL c. 59, sec. 5C);
4. Small commercial exemptions adopted as part of annual tax classification decisions (MGL c. 59, sec. 5I);
5. Community preservation surcharge exemptions (MGL c. 44B, sec. 3); and
6. Municipal water infrastructure surcharge exemptions (MGL c. 40, sec. 39M).

2. What change has been made to the amount of the Residential Exemption?

The selectmen or mayor, with the approval of the city council, may adopt a residential exemption for all Class one, residential properties that are the principal residence of the taxpayer on January 1. MGL c. 59, sec. 5C. The adoption is made annually, usually at the same time as the adoption of the residential factor which determines the percentages of the local tax levy to be borne by each class of real property under MGL c. 40, sec. 56. See Section IV-C of Informational Guideline Release (IGR) 16-402. However, the residential exemption may be adopted before or after the adoption of the residential factor.

On or after November 7, 2016, a city or town may adopt a residential exemption for this fiscal year, FY2017, of up to 35% of the average assessed value of all Class One, residential properties, unless it has a special act setting a different limit. See secs.124 and 247 of c. 218 of the Acts of 2016 (the Municipal Modernization Act). Previously, the maximum exemption was 20% of the average assessed value of all Class One, residential properties. As noted above, the deadline for taxpayers who did not receive adopted residential exemptions in their actual tax bills is April 1 beginning in FY2017, unless the city or town has a special act setting a different deadline. The recent

amendments to MGL c. 59, sec. 5C do not amend these special acts. Consequently, communities with special legislation must adhere to the provisions of their acts regarding the maximum exemption and the application deadline.

Additional information on the residential exemption may be found in the *Ask DLS* published in the September 1, 2016 issue of *City and Town*.

3. If a community has accepted the Community Preservation Act (CPA), are applications for surcharge exemptions open to public inspection? If a surcharge exemption application is denied, can the applicant appeal to the Appellate Tax Board (ATB)?

Cities and towns accepting the CPA can adopt any of four optional full or partial exemptions from the CPA surcharge. In addition, taxpayers granted property tax exemptions receive a reduction in their assessed CPA surcharges in proportion to their reduced property taxes. MGL c. 44B, sec. 3. However, the CPA does not currently contain any application deadlines or procedures for taxpayers seeking these reductions.

As explained above, amendments made by the Municipal Modernization Act and effective November 7, 2016 will give taxpayers until April 1 to apply to the assessors for a CPA surcharge exemption (or 3 months after the actual tax bills are mailed, if later). Taxpayers who want to contest the action by the assessors on their applications will also be able to appeal to the ATB in the same manner and by the same deadline as property tax appeals under MGL c. 59, secs. 64, 65, 65A and 65B. In addition, CPA applications will be exempt from public disclosure just like applications for property tax abatements or personal exemptions as provided in MGL c. 59, sec. 60.

4. What changes have been made to the overlay account?

The overlay is raised by the assessors in the annual tax levy as a reserve for abatements and exemptions. MGL c. 59, secs. 23, 25 and 70A. Currently, there is a separate overlay reserve account for each fiscal year to cover property tax abatements and exemptions granted by the assessors or ordered by the Appellate Tax Board for just that fiscal year.

The Municipal Modernization Act creates a single overlay reserve to cover the costs of potential abatements or exemptions granted by the assessors or ordered by the Appellate Tax Board for any fiscal year. With a single overlay reserve, municipalities may now avoid deficits which formerly occurred when amounts abated or exempted exceeded the balance in the overlay account for that particular year. The single overlay takes effect on November 7, 2016. No local action is needed. As of that date, all balances in all overlay accounts will be merged into a single overlay account, the balance for which may be charged for abatements or exemptions granted for any fiscal year. Local assessors, however, will still need to review, as part of each year's budget

and tax rate process, whether an additional amount needs to be raised that year for addition to the single overlay account.

Published *City & Town* - November 3, 2016

5. What is the impact of Municipal Modernization Act amendments of existing general law statutes that are not applicable in some municipalities because special acts apply instead? For example, if a special act provides for a city or town to grant a residential exemption up to a certain amount and sets a deadline for exemption applications "notwithstanding" MGL c. 59, sec. 5C, what is the effect of the Municipal Modernization amendment of MGL c. 59, sec. 5C regarding the amount of the exemption and deadline for exemption application on the special act?

None. A special act remains in effect and continues to govern on or after the November 7, 2016 effective date of the Municipal Modernization Act unless the community seeks to repeal it so as to operate under the amended general law. In this example, the community's special act would determine the maximum amount of the residential exemption and the due date for residential exemption applications in that community.

6. What is the impact of Municipal Modernization Act amendments of local acceptance statutes that were accepted by municipalities before the Act's November 7, 2016 effective date?

As a general rule, a municipality that accepts a statute accepts any amendments the legislature subsequently makes in the statute. Therefore, if a municipality has accepted a local option statute, then it operates under the statute as amended. No further action is necessary unless the legislature provides otherwise. In the Municipal Modernization Act there is one such exception, which applies to municipalities and other local entities that accepted MGL c. 32B, sec. 20 to establish an Other Post-Employment Benefits (OPEB) Liability Trust Fund before November 7, 2016.

7. **What action does a city or town that currently has an OPEB Fund under MGL c. 32B, sec. 20 and wishes to adopt the changes made to that statute by the Municipal Modernization Act have to take?**

Section 238 of the Municipal Modernization Act specifically provides that OPEB funds established before the effective date of the Act, November 7, 2016, will continue as originally established, unless the community "reaccepts said section 20 of said chapter 32B after the effective date of this act." Therefore, to operate an OPEB fund under the amended section 20, the city or town's legislative body would have to vote to reaccept MGL c. 32B, sec. 20 after November 7, 2016.

8. How does the Municipal Modernization Act change in the treatment of premiums received when issuing debt under MGL c. 44, sec. 20 apply to premiums received for borrowings authorized before November 7, 2016, the effective date of the Act?

Section 67 of the Municipal Modernization Act amends MGL c. 44, sec. 20 which governs the treatment of premiums received in connection with the sale of bonds or notes. Currently, premiums (net of issuance costs) are general fund revenue. As of November 7, 2016, premiums (net of issuance costs) are: (1) used to pay project costs and to reduce the amount of the borrowing authorization by the same amount when the borrowing vote so authorizes; or (2) reserved for appropriation for capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received.

Bonds or notes sold before November 7, 2016. Premiums received on bonds or notes authorized and sold before the effective date of the Municipal Modernization Act are general fund revenue that may not be spent without appropriation. MGL c. 44, sec. 53. However, if the borrowing is the subject of an approved Proposition 2½ debt exclusion, MGL c. 44, sec. 20 requires that the amount excluded be adjusted to reflect the true interest cost of the borrowing. Therefore, general fund premiums received for debt excluded borrowings must either be (1) reserved for appropriation to offset budgeted debt service in future years for the loan, or (2) appropriated to pay project costs. In the second option, the borrowing authorization must also be reduced by the same amount. The appropriation for project costs and commensurate reduction in borrowing authorization must be included in the original legislative body vote authorizing the loan, or a subsequent vote before or after the sale.

Bond or notes sold on or after November 7, 2016. Regardless of when the city or town authorized the loan, premiums received on bonds or notes sold on or after the effective date of the Municipal Modernization Act must be: (1) used to pay project costs and to reduce the amount of the borrowing authorization by the same amount when the borrowing vote so authorizes; or (2) reserved for appropriation for capital projects for which a loan has been, or may be, authorized for an equal or longer period of time than the loan for which the premiums were received. Note, however, that a city or town receiving premiums for debt excluded bonds or notes sold on or after November 7, 2016 will need to use the option to pay project costs and reduce the borrowing authorization in order to make the required interest cost adjustment. The authorization to use that option should be included in the original legislative body vote authorizing the loan, but may also be included by an amendment of the loan authorization that is voted before the sale.

Bond and municipal counsel should be consulted for language to be used to amend existing borrowing authorizations and to include in future authorizations in order to use premiums for project costs and reduce the amount authorized.

9. How does the Municipal Modernization Act change the use of surplus bond proceeds received before November 7, 2016, the effective date of the Act? When the Act becomes effective, how is the $50,000 balance available for application to existing debt determined in a multi-purpose loan?

Regardless of when a city, town or district authorizes a loan for a particular purpose, project or acquisition, sold the bonds or notes, or completed the purpose, project or acquisition for which the loan was authorized, the proceeds remaining are available funds for restricted purposes under MGL c. 44, sec. 20. Both before and after the November 7, 2016 effective date of the Act, the determination of available surplus proceeds for a loan is based on the amount borrowed and spent for each purpose for which the city, town or district has authorized debt. Selling bonds or notes for multiple authorized purposes at the same time does not alter the purpose, term or amount of each loan. For example, a treasurer sells multi-purpose bonds for three projects for which the city, town or district had authorized debt of $100,000 (project 1), $2,000,000 (project 2) and $20,000,000 (project 3). After completion and payment of all expenses, $750 of the proceeds remain for project 1, $48,500 for project 2 and $90,000 for project 3.

Use of the surplus proceeds before November 7, 2016. Before the November 7, 2016 effective date of the Act, a city, town or district may only appropriate an available surplus of (1) $1,000 or less from a particular loan to pay debt service on that loan, or (2) any amount from any loan for any purpose for which the city, town or district may borrow for an equal or greater term than the term for which that loan was issued. Therefore, before November 7, 2016, only the $750 available surplus for project 1 could be appropriated to pay debt service and then only on the debt service for the project 1 loan. Any other use of the available surpluses for each loan would be limited to appropriation for another purpose for which a loan can be authorized for an equal or greater term than that loan was issued.

Use of the surplus proceeds on or after November 7, 2016. On or after November 7, 2016, however, an available surplus of (1) $50,000 or less for a particular loan may be applied to any debt service with the approval of the chief executive officer, or (2) any amount may be appropriated any purpose for which the city, town or district may borrow for an equal or greater term than the term for which that loan was issued. Therefore, on or after November 7, 2016, the available surpluses of $750 for project 1 and $48,500 for project 2 may be applied to the debt service on any loan with the approval of the chief executive officer. Again, any other use of the available surplus for each particular loan would be limited to appropriation for another purpose for which a loan can be authorized for an equal or greater term than that loan was issued.

10. What does a city or town that accepted MGL c. 40, sec. 57, which allows the denial, suspension, revocation or non-renewal of local licenses and permits for applicants who are delinquent in paying their local taxes, charges and fees, have to do in order to take advantage of the amendments to the statute made by the Municipal Modernization Act that allow a collector to issue delinquency lists to

permitting and licensing boards more than once a year? If a special town meeting is scheduled before the Act's November 7, 2016 effective date, may the town re-accept MGL c. 40, sec. 57 and amend its implementation by-law at that meeting or must it wait until November 7, 2016 to do so?

As indicated in a previous question, the legislative body of the city or town does not need to re-accept MGL c. 40, sec. 57. By accepting a statute, a city or town agrees to accept all amendments the legislature may make to it in the future. An exception to this rule is where the legislature expressly provides that the amendments do not apply unless the city or town takes some additional action. For these amendments, the legislature did not require re-acceptance or other action.

However, because MGL c. 40, sec. 57 requires the adoption of an implementation ordinance or by-law, a city or town that has accepted the statute will need to amend its existing ordinance or by-law to (1) eliminate the current minimum 12-month delinquency requirement and (2) direct the collector to disseminate a delinquency list to the community's permitting or licensing boards on a more frequent schedule. If a city or town does not wish to take advantage of these changes, it does not need to amend its ordinance or by-law and may continue to operate as it does now.

For a town, the effective date of new or amended by-laws is governed by MGL c. 40, sec. 32. Within 30 days of the adjournment of the town meeting adopting the new or amended by-law, the town clerk must submit it to the Attorney General. The Attorney General then has 90 days to review the by-law for consistency with the Constitution and laws of the Commonwealth and issue a decision either approving or disapproving the by-law. If approved, a general by-law takes effect on the date the posting and publishing requirements of MGL c. 40, sec. 32 are met, unless a later effective date is set out in the by-law. Therefore, it appears unlikely that any implementation by-law adopted at an already scheduled town meeting held before November 7, 2016 could take effect until after that date. Municipal counsel should be consulted, however, about whether to include specific language in the amended by-law in that regard. We understand from the Attorney General's office that there can be instances where by-laws are adopted to implement special legislation not yet enacted, or address other situations to occur later, and those by-laws can be approved by the Attorney General and take effect after the contingency is met.

The amendment of a city's existing implementation ordinance does not need the approval of the Attorney General under MGL c. 40, sec. 32. Municipal counsel should be consulted about the applicable charter provisions and best course of action regarding the timing of any amendment.

11. How does the Municipal Modernization Act impact the treatment of parking meter revenues?

Before the Municipal Modernization Act, parking meter or other parking receipts had to be reserved for appropriation under MGL c. 40, secs. 22A, 22B and 22C. As of the

November 7, 2016 effective date of the Act, however, those receipts are unrestricted and unreserved general fund revenue unless the city or town accepts provisions in those statutes in order to credit them to a "receipts reserved for appropriation" special revenue fund. Any revenue received before November 7, 2016 remains in the receipts reserved special revenue fund to be appropriated accordingly.

If a city or town wants to continue treating parking revenues as "receipts reserved for appropriation," its legislative body must accept the provisions in the statutes. If the city or town does not use any of the parking revenues it anticipates receiving on or after November 7, 2016 as estimated receipts when setting its fiscal year 2017 tax rate, it may in an acceptance vote taken on or before June 30, 2017 provide that any revenue received on or after November 7, 2016 be credited to the receipts reserved fund. Otherwise, the acceptance will only apply to revenues received on or after the effective date of the vote, or later effective date specified in the vote.

Published *City & Town* – December 1, 2016

12. How has Appellate Tax Board jurisdiction changed under the Municipal Modernization Act?

The Municipal Modernization Act made three changes in the jurisdictional requirements for property tax appeals. These changes took effect on November 7, 2016.

First, the threshold tax amount at which payment is required in order to maintain an appeal at the Appellate Tax Board (ATB) has been raised from $3,000 to $5,000. Unpaid taxes of more than $5,000 will bar an appeal, unless the three-year average of the taxes assessed against the property is $5,000 or less. MGL c. 59, sec. 64.

Second, where the right of appeal is conditioned on the payment of tax, both the preliminary and actual tax installments must be paid by the due date without incurring interest. Failure to make a preliminary tax payment by the due date without incurring interest is now a bar to jurisdiction. MGL c. 59, sec. 64.

Third, there is now a "postmark rule" that will treat tax payments as timely for ATB jurisdictional purposes if the payment arrives in an envelope bearing a postmark date on or before the payment due date. This rule applies to the jurisdiction of the ATB, not to the date that interest on unpaid taxes begins to accrue. It provides that the date of delivery by United States mail or by an alternative delivery service to the collector is deemed to be the date of (1) the U.S. Postal Service postmark, (2) a certificate of mailing stamped and postmarked by the U.S. Postal Service, (3) a certified mail receipt provided by the U.S. Postal Service or (4) other substantiating date mark permitted by ATB rules. The burden is on the taxpayer to prove the timely mailing of any tax payment to the collector and the collector is not required to maintain envelopes or any record relative to the date the tax payment was mailed. MGL c. 59, secs. 57 and 57C.

13. What are the options for apportioning betterment or special assessments under the Municipal Modernization Act?

Betterment or special assessments may be apportioned or divided into as many as 20 annual installments at the request of the property owner under MGL c. 80, sec. 13. Each year, an installment of the principal is added to the real estate tax, along with interest on the unpaid balance. This results in declining installments over the apportionment period. Municipal Modernization Act amendments to that statute give cities, towns and districts three alternatives for apportioning betterments or special assessments committed on or after November 7, 2016. They may opt to let taxpayers apportion their betterments or special assessments into annual installments that are:

1. Equal to the number of years for which the municipality is borrowing for the infrastructure improvement that is being financed by the assessment.

2. Equal combinations of principal and interest (level annual installments instead of level principal installments), or more repaid payments of principal.

3. Payable in the same number of preliminary and actual installments as the real estate tax in the municipality.

14. Did the Municipal Modernization Act make any changes regarding interest charged on betterment assessments under MGL c. 80, sec. 13?

Yes. Under MGL c. 80, sec. 13, the interest rate on unpaid betterments or special assessments is fixed at 5%, or at the option of the city, town or district, at 2% above interest rate on the loan financing the project. For betterments or special assessments committed on or after November 7, 2016, the optional rate may now be fixed at any amount up to 2% above the interest rate the city, town or district is paying on its loan. In addition, interest will now begin to accrue on unpaid betterments or special assessments 30 days from the date the collector mailed the bill. Previously, interest began to accrue 30 days from the date the assessors committed the betterment or special assessment to the collector.

15. The Municipal Modernization Act increased the maximum abatement that may be earned under MGL c. 59, sec. 5K by taxpayers over 60 years old who are participants in the Senior Work-off abatement program. What action does a city or town that previously accepted MGL c. 59, sec. 5K have to take to implement the increase in the maximum abatement from $1,000 to $1,500?

It depends on how the maximum abatement under the program is established. As a general rule, if a municipality has accepted a local option statute, then the community will operate under the statute as amended. Therefore, a city or town is not required to reaccept MGL c. 59, sec. 5K. If the maximum amount that may currently be granted by the city or town under the program is fixed by a bylaw, ordinance or other legislative

body vote authorizing the program or establishing program rules, then the city or town must amend the bylaw, ordinance or vote. If the maximum amount is set by the selectboard, mayor or other officer administering the program, however, then the board, mayor or officer may increase the maximum abatement so long as any change is consistent with any bylaw, ordinance or vote establishing program rules, e.g., a rule establishing a limit on the aggregate amount of abatements during any fiscal year.

16. What is the local procedure required for cities or towns to use the revolving fund added to MGL c. 40, sec. 3 for monies received from the lease or rental of non-school municipal property?

The Municipal Modernization Act amended MGL c. 40, sec. 3 to allow a city or town that rents or leases a public building or property, or space within a building or property, other than a building or property under the control of the school committee, to deposit any monies received on or after November 7, 2016 from the rental or lease into a separate revolving fund. The board, committee or department head in control of the building or property may then spend the monies without appropriation for the upkeep of the rented building or property. The primary purpose of the fund is to provide the board, committee or department head with a revenue source to pay expenses associated with keeping the rented premises in the condition required in its capacity as a landlord, which could include custodial costs, utilities, ordinary repairs, etc. It is used to account for payments by tenants with a leasehold interest in the building or property, not fees charged for its temporary or one-time use for civic, social, educational or recreational activities, such as a library conference room for a private organization's monthly meeting. Any balance in the rental revolving fund at year-end closes to the general fund, unless the city or town accepts a local option provision that allows carry-over of the funds. If accepted, the balance remains in the account and may be spent for the upkeep and maintenance of any facility under the control of the board, committee or department head in control of the property. Before the amendment, MGL c. 40, sec. 3 provided for a revolving fund only for monies received from the rent or lease of a surplus building, or surplus space within a building, under the control of the school committee.

Unlike the revolving fund required under MGL c. 40, sec. 3 for monies received from the rental of buildings or space under the control of the school committee, however, the use of a revolving fund for monies received from the rental of non-school municipal property is discretionary. Therefore, if a city or town wants to use a revolving fund for the proceeds from any particular lease or rental of its real property, its legislative body must vote to establish the fund for that rental. A separate vote should be made for each separate rental or lease of a building or space, or the municipality could adopt a by-law or ordinance that sets out the rentals or leases for which a revolving fund is to be established.